

met, while they are engaged in any of the customary operations of the establishment which is commonly recognized as a country elevator. Included among such employees are those who are engaged in selling the elevator's goods or services, keeping its books, receiving, handling, and loading out grain, grinding and mixing feed or treating seed for farmers, performing ordinary maintenance and repair of the premises and equipment or engaging in any other work of the establishment which is commonly recognized as part of its operations as a country elevator. An employee employed by such an elevator is not restricted to performing his work inside the establishment. He may also engage in his exempt duties away from the elevator. For example, a salesman who visits farmers on their farms to discuss the storage of their grain in the elevator is performing exempt work while on such visits. It is sufficient that an employee employed by an elevator is, while working away from the establishment, doing the exempt work of the elevator. If the establishment is engaged only in activities commonly recognized as those of a country elevator and none of its employees engaged in any other activities, all the employees employed by the country elevator will come within the exemption if no more than five employees are employed in the establishment in such operations and if the "area of production" requirement is met.

§ 780.719 Employees not employed "by" the elevator establishment.

Since the exemption depends on employment "by" an establishment qualified for exemption rather than simply the work of the employee, employees who are not employed by the country elevator are not exempt. This is so even though they work in the establishment and engage in duties which are part of the services which are commonly recognized as those of a country elevator. Since they are not employed by the elevator, employees of independent contractors, farmers and others who work in or for the elevator are not exempt under section 13(b)(14) simply because they work in or for the elevator (see *Walling v. Friend*, 156 F. 2d 429; *Mitchell v. Kroger*, 248 F. 2d 935;

Durkin v. Joyce Agency, 110 F. Supp. 918, affirmed sub. nom. *Mitchell v. Joyce Agency*, 348 U.S. 945). Thus an employee of an independent contractor who works inside the elevator in drying grain for the elevator is not exempt under this section.

EMPLOYMENT "WITHIN THE AREA OF PRODUCTION"

§ 780.720 "Area of production" requirement of exemption.

(a) In addition to the requirements for exemption previously discussed, section 13(b)(14) requires that the employee employed by an establishment commonly recognized as a country elevator be "employed within the area of production (as defined by the Secretary)." Regulations defining employment within the "area of production" for purposes of section 13(b)(14) are contained in part 536 of this chapter. All the requirements of the applicable regulations must be met in order for the exemption to apply.

(b) Under the regulations, an employee is considered to be employed within "the area of production" within the meaning of section 13(b)(14) if the country elevator establishment by which he is employed is located in the "open country or a rural community," as defined in the regulations, and receives 95 percent or more of the agricultural commodities handled through its elevator services from normal rural sources of supply within specified distances from the country elevator. A definition of "area of production" in terms of such criteria has been upheld by the U.S. Supreme Court in *Mitchell v. Budd*, 350 U.S. 473. Reference should be made to part 536 of this chapter for the precise requirements of the definition.

(c) However, it is appropriate to point out here that nothing in the definition places limits on the distance from which commodities come to the elevator for purposes other than the storage of marketing of farm products. The commodities, 95 percent of which are required by definition to come from specified distances, are those agricultural commodities received by the elevator with respect to which it performs the primary concentration,